IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 555 OF 2004

SHRI CAETANINHO DO ROSARIO AND ANR., ...Petitioners

Versus

SHRI RAMA K.GAONKAR (SIN.DEC.) THROUGH LEGAL HEIRS ....Respondents

Shri S.S. Kantak with Ms.Rakhi M.Chodankar,Advocates for the Appellants.

Coram:- R. M. LODHA, J.

Date:- 28th September, 2005

P.C.:

Heard Mr. S.S. Kantak, the learned counsel for the petitioners. Despite notice, the respondents have not chosen to appear.

2. An application was made by the present petitioners who are decree holders under Section 51(d) of the Code of Civil Procedure seeking appointment of a receiver for cultivating the property bearing Survey No.4/2 of the village Maloli, Sattari, Goa; to sell the agricultural produce of the said property and to deposit the same in the Court in satisfaction of the decree that has been passed in favour of the decree holders and also for an order directing attachment and sale of the movable properties lying in the residential house bearing No.5 of the Judgment Debtors.

3. The executing Court granted the said application in so far as attachment and sale of movable properties lying in the residential house of the Judgment debtors was concerned. However, the executing Court rejected the prayer for appointment of receiver for cultivating the property.

4. The refusal by the executing court to appoint receiver for cultivating the property bearing survey No.4/2 has given rise to the present Writ Petition at the instance of the decree holders.

5. Section 51(d) of the Code of Civil Procedure empowers the Court in execution of the decree to appoint a receiver on the application of the decree holder. Order 40, rule 1(d) empowers the Court to confer upon the receiver of such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit to be just and convenient. Looking to the prayer made in the application for a receiver to be appointed for cultivating the property, if the executing Court rejected the same as not being just and convenient, the said order cannot be faulted.

6. If the crop was already standing and an application was made for appointment of receiver in respect of the standing crop, the position would have been different and in that fact situation the Court might have considered the appointment of receiver for the standing crop in accordance with law and if thought fit necessary order for its harvesting and realisation of profits from the sale of such crop could be passed. However, the decree holders prayed for appointment of a receiver for cultivating the property bearing survey No.4/2 of village Maloli, Sattari, Goa which in my view cannot be said to have been wrongly rejected. The rejection of such prayer by the trial Court does not call for interference in extraordinary jurisdiction.

Writ Petition is accordingly dismissed.

R. M. LODHA, J.

sl.